

State of California  
Business, Transportation and Housing Agency  
Department of Transportation

PROJECT BUSINESS MATTERS  
Time Extension -Project Completion  
Action Item

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Agenda Item: 2.8e.(7)

*Original Signed By*

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Finance  
May 1, 2000

**TIME EXTENSION REQUEST – CTC RESOLUTION G-99-25**  
**GUIDELINES FOR ALLOCATING, MONITORING AND AUDITING OF**  
**FUNDS FOR LOCAL ASSISTANCE PROJECTS**

**PROPOSITION 116 BOND PROGRAM**  
**PROPOSITION 108 BOND PROGRAM**  
**WAIVER-00-32**

**ISSUE**

Resolution G-99-25, *Guidelines for Allocating, Monitoring and Auditing of Funds for Local Assistance Projects*, adopted by the California Transportation Commission (Commission) on August 18, 1999, stipulates that Proposition 116 funds allocated for local project development or right of way costs must be expended by the end of the second fiscal year following the fiscal year in which the funds were allocated.

For the intercity rail projects on the attached charts, the Department will not be able to meet the deadlines specified in the *Guidelines*. The Department held these funds as a reserve against potential contractor claims on the *California Car* contract. The Department is requesting an extension to allow sufficient time to close out the *California Car* contract and to use the remaining funds to acquire additional equipment and make improvements to the existing equipment consistent with the purposes for which the funds were originally allocated.

**RECOMMENDATION**

The Department supports the project completion extension request for the Rail Program *California Car* funds.

**SUMMARY**

The Commission has allocated \$93,641,063 in six allocations of Proposition 108 and Proposition 116 bond funds to the Department for the acquisition of rail rolling stock (additional allocations were made to the Department for rolling stock acquisition; these allocations have been fully expended). To date, \$86,870,722 has been reimbursed for eligible expenditures, with a balance of \$6,860,341 remaining. Since 1992, the Caltrans Rail Program received allocations of Proposition 108 and Proposition 116 bond funds to acquire passenger rail cars and locomotives. Caltrans entered into a contract with the Electro-Motive Division of General Motors to purchase 9 locomotives. This acquisition is complete and the contract closed out. The *California Car* contract, however, has not yet been closed and outstanding issues remain to be resolved. Many of the open issues could not be closed until completion of the car's warranty period. The attached chart describes the delays that have resulted in the extension request.

**BACKGROUND**

In early 1992, the Department entered into a contract with the Morrison-Knudsen Corporation (MK) for the construction of a total of 113 intercity and commuter rail vehicles. Reports began to surface in mid-1994 that Morrison Knudsen was experiencing financial difficulties in all phases of its operations, including its transit car division. It was also becoming clear that in an effort to gain a foothold in the U.S. rail car market MK had seriously underbid not only the California Car project but other transit car projects, including Chicago Metra, the Bay Area Rapid Transit District (BART), and the Viewliner II project for Amtrak.

MK's efforts to address its worsening financial problems impacted the *California Car* program. Delivery of the first intercity car fell nearly a year behind schedule and MK did not have sufficient resources to address a number of significant commuter car design issues. In June of 1995, amid reports of the imminent bankruptcy of one of the nation's largest construction firms, Caltrans placed MK in default of the *California Car* contract.

To address its financial difficulties, MK underwent a corporation-wide restructuring including the sale of a significant portion of its assets and the re-negotiation of many of its contracts. MK's Transit Division, however, could not be sold because of the magnitude of outstanding contract liabilities. In October 1995, after nearly three months of intensive negotiations, Caltrans, MK and MK's sureties and bankers finalized a new *California Car* contract. To complete the contract, the sureties backing the Performance Bonds of MK's various rail car manufacturing contracts created a limited liability company called the "American Passenger Rail Car Company" (Amerail) to complete the outstanding contract liabilities of MK's Transit Division.

Execution of the amended *California Car* contract has been complex, hampered by conflicts between the Department and the sureties and Amerail. These conflicts include interpretation of contract provisions, acceptance of contract deliverables, and resolution of potential "contractor claims" against the Department for work Amerail claimed was performed outside the scope of the contract. Some of these outstanding issues could not be addressed until the closure of the manufacturer's warranty period; the warranty period on the cars terminated in October 1999.

Of particular concern to the Department during the contract period was the issue of potential contractor claims. The State Constitution prohibits the use of State Highway Account funds for transit related rolling stock. If Amerail or the sureties filed a claim against the Department which was upheld either in arbitration or litigation, State Highway Account funds could not have been used to pay the claim.

The other potential source of funds for the payment of claims was the Public Transportation Account. All available funds from this account, however, are fully allocated annually for rail operations, the State Transit Assistance Program, and the Transit Capital Improvement Program. Payment of any claims from this fund source would have resulted in funds being diverted from rail operations or needed rail capital projects.

To protect the Department from the potential financial impact, and to minimize the need to divert funds to this contract from other projects, the Department retained all available rail equipment funds for potential use to pay these claims or on litigation related to the California Car contract. A "Settlement Agreement" has subsequently been signed by the Department and the sureties eliminating the risk of contractor's claims. The Department and the sureties are negotiating the release of the contract retention funds. Litigation over this amount seems unlikely given the relatively small unpaid balance. All of the California Cars are out of warranty and all warranty claims have been satisfactorily closed out.

With the imminent completion of the *California Car* contract and the minimal risk funds will be required to pay claims, the Department has developed a proposed expenditure plan for the remaining funds that will allow it to acquire additional locomotives and cars, and to implement design enhancements on the existing fleet.

The 1999-2000 Budget Act appropriated \$17.5 million in General Fund monies to the Department for the acquisition of additional rail passenger rolling stock to augment the *California Car* and locomotive fleet. This new equipment is needed for planned service expansion, and to meet the needs of a growing ridership and travel demand. The Department proposes to supplement these General Fund proceeds with the bond funds remaining from the *California Car* and locomotive contracts to increase the number of rail cars and locomotives currently being acquired by the Department, and to perform additional support activities related to the rolling stock acquisition. The use of \$1,940,286 in Proposition 108 funds as allocated for the payment of sales tax on rolling stock will allow the Department to purchase an additional rail car for use in Southern California. The Department also proposes utilizing some of these funds to make necessary design modifications and corrections to the existing *California Car* fleet. These enhancements will improve passenger comfort and safety, and reduce operating and maintenance costs through the installation of access panels, improved door system design and exterior baggage compartment access. These design features could not be incorporated into the original *California Car* design due to the tenuous financial condition of the manufacturer, and the critical need for the rail cars to be placed in service in an expeditious manner.

Attachment

May 1, 2000

ATTACHMENT

**REQUEST FOR TIME EXTENSION FOR PROJECT COMPLETION**  
**INTERCITY RAIL PROJECT**  
**CTC Resolution G-99-27, STIP Guidelines, Section 59- Timely Use of Funds**

Recipient	Project Description	Allocation Date	Resolution No.	Allocation Amount	Year/ Program	Status/ Reason for Delay	Extension Request/To	Department Recommendation
Caltrans Rail Program	Locomotive Acquisition	10/8/92	BFP-92-08	\$22,500,000  Approved Expenditures to date: \$22,299,540  Remaining balance: \$200,460  Percentage of project completed: 99%	92/93 Prop 108	Funds retained for possible use to pay contractor claims on California Car contract.	20 months (from May 11, 2000)  Through: January 31, 2002	Approve request for 20 months extension to allow the Department to complete the resolution of all remaining California Car contract issues. If not needed for California Car settlement, funds would be applied to the acquisition of additional locomotives.
Caltrans Rail Program	California Car Food Service Change Order	10/13/93	BFA-93-02	\$5,000,000  Approved Expenditures to date: \$4,972,570  Remaining balance: \$27,430  Percentage of project completed: 99%	92/93 Prop 108	California Car procurement contract has close-out issues and unknown contractor claims remaining to be resolved. Funds held for possible use to pay potential contractor claims.	12 months (from May 11, 2000)  Through: May 31, 2001	Approve request for 12 month extension to close out all outstanding California Car contract issues and pay contract retention; use unexpended funds as available to perform design enhancements to existing equipment.
Caltrans Rail Program	Acquire Cars and Locomotives	11/17/93	BFA-93-03	\$59,424,661  Approved Expenditures to date: \$53,486,415  Remaining balance: \$5,938,246  Percentage of project completed: 89%	92/93 Prop 108	Delay caused by significant and unanticipated California Car contract close-out disputes and potential for contractor claims. Warranty period terminated in October 1999-final close-out could not take place before end of warranty period.	20 months (from May 11, 2000)  Through: January 31, 2002	Approve request for 20 months extension to close out all outstanding California Car contract issues and pay contract retention. Some of the funds in this allocation are contract retention that the Department is obligated to pay to the contractor. Use any available unexpended funds to acquire additional equipment.

May 1, 2000

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**REQUEST FOR TIME EXTENSION FOR PROJECT COMPLETION**  
**INTERCITY RAIL PROJECT**

*CTC Resolution G-99-25, Guidelines for Allocating, Monitoring and Auditing of Funds for Local Assistance Projects.*

Recipient	Project Description	Allocation Date	Resolution No.	Allocation Amount	Year/ Program	Status/ Reason for Delay	Extension Request/To	Department Recommendation
Caltrans Rail Program	Acquire Intercity Rail Cars	4/10/92	BFA-91-05	\$4,100,000  Approved Expenditures to date: \$3,924,870  Remaining balance: \$175,130  Percentage of project completed: 96%	92/93 Prop 116	Delay caused by significant and unanticipated California Car contract close-out disputes. Warranty period terminated in October 1999. Contract closure could not take place prior to closure of warranty.	20 months (from May 11, 2000)  Through: January 31, 2002	Approve request for 20 months extension to close out all outstanding California Car contract issues and pay contract retention; use unexpended funds to acquire additional equipment.
Caltrans Rail Program	Purchase of Rolling Stock	11/4/91	BFP-91-08	\$500,000  Approved Expenditures to date: \$216,105  Remaining balance: \$283,895  Percentage of project completed: 43%	91/92 Prop 116	California Car procurement contract has close-out issues and unknown contractor claims remaining to be resolved. Funds held for possible use to pay potential contractor claims.	12 months (from May 11, 2000)  Through: May 31, 2001	Approve request for 12 month extension to close out all outstanding California Car contract issues and pay contract retention; use unexpended funds as available to perform design enhancements to existing equipment.
Caltrans Rail Program	Rail Car Acquisition Oversight	11/28/95	BFA-95-07	\$2,116,402  Approved Expenditures to date: \$1,881,222  Remaining balance: \$235,180  Percentage of project completed: 89%	92/93 Prop 116	Existing contract extended through 9/30/99; dispute between the Department and Booz•Allen over invoices and contract deliverables has delayed closure of contract and release of retention.	20 months (from May 11, 2000)  Through: January 31, 2002	Approve request for 20 months extension to allow the Department to complete the resolution of all remaining California Car Consultant oversight issues. These funds are retention on the contract – the Department is contractually obligated to pay these funds to the contractor upon close of outstanding issues.